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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,363	02/13/2004	Dave Procknow	018367-9805-00	7900
23409	7590	02/24/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	
DATE MAILED: 02/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

1-2

Office Action Summary	Application No. 10/779,363	Applicant(s) PROCKNOW ET AL.	
	Examiner James F. Hook	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9,13-15 and 41-45 is/are pending in the application.
- 4a) Of the above claim(s) 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9,13-15,41,42,44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/27/05; 5/7/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of figure 4 in the reply filed on November 25, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

It is noted that claim 43 was listed as a generic claim, however, figure 4 which was elected does not set forth any other means to hold the insert in other than the gasket, therefore the additional structure of claim 43 is not supported which requires a fastener operable to attach the insert to the bend portion which is not supported by the description of figure 4. The only extra fastener found in that figure are screws or bolts 95 which attach the intake tube to the cylinder through holes 90 and do not attach the insert to the bend portion, therefore this claim is not considered generic to the species of figure 4, and is hereby withdrawn from further consideration as being drawn to a non-elected species.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 13-15, 41, 42, 44, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ulmer. The patent to Ulmer discloses the recited passageway for

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directing fluid along a path that includes a bend comprising a conduit 3 having a first and second aperture at each end, and a bend portion 4 adjacent the second aperture, an outer bend surface integrally formed as part of the conduit to at least partially define the second aperture, an insert 5 including at least a portion of an inner bend surface, the insert disposed near the second aperture such that the outer bend surface and the inner bend surface cooperate at least partially to define the bend, the bend has a flange at the end of the bend, the conduit is a substantially tubular, and cylindrical on both the inner and outer surfaces, and further is circular in cross section, the bend portion includes a pocket formed by the bend itself to receive the insert, the fluid is an air/fuel mixture and can be considered to include intake air, the use of such with coolant in a coolant system of an internal combustion engine is merely intended use, the insert and passageway are used with an internal combustion engine.

Claims 1, 4-6, 13-15, 41, 42, 44, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Welker. The patent to Welker discloses the recited passageway for directing fluid along a path that includes a bend comprising a conduit 10 having a first and second aperture at each end, and a bend portion near 12 adjacent the second aperture, an outer bend surface near 44 integrally formed as part of the conduit to at least partially define the second aperture, an insert 30 including at least a portion of an inner bend surface, the insert disposed near the second aperture such that the outer bend surface and the inner bend surface cooperate at least partially to define the bend, the bend has a flange 18 at the end of the bend, the conduit is a substantially tubular, and cylindrical on both the inner and outer surfaces, and further is circular in cross

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section, the bend portion includes a pocket formed by the bend itself to receive the insert, the use of such with air/fuel, intake air, or coolant and the systems of an internal combustion engine are considered merely intended use.

Claims 1, 4, 5, 8, 9, 13, 44, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Cousimano. The patent to Cousimano discloses the recited passageway for directing fluid along a path that includes a bend comprising a conduit T having a first and second aperture at each end, and a bend portion adjacent the second aperture, an outer bend surface integrally formed as part of the conduit to at least partially define the second aperture, an insert 10 including at least a portion of an inner bend surface, the insert disposed near the second aperture such that the outer bend surface and the inner bend surface cooperate at least partially to define the bend, the bend has a flange B at the end of the bend, the conduit is a substantially tubular, and cylindrical on both the inner and outer surfaces, and further is circular in cross section, the fluid is an air/fuel mixture in that it is exhaust which routinely has unspent fuel and air, the use of such with coolant in a coolant system of an internal combustion engine or for intake air is merely intended use, the insert and passageway are used with an internal combustion engine, there is also a gasket provided at flange B which is adjacent the bend portion and insert, and where the gasket works in cooperation with the flange and head 16 which retains the insert in a desired position when the flange, head and gasket are in place.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ulmer or Welker. The patents to Ulmer and Welker disclose all of the recited structure with the exception of what the insert is made from, specifically polyester thermosetting plastic. It is considered an obvious choice of mechanical design to form the inserts of any materials capable for use in the system, and the use of thermosetting plastics such as polyester are considered merely a choice of mechanical expedients and it would only require routine experimentation to arrive at optimum materials to use for the insert that would be both inexpensive and capable of use in a specific environment so that they can be replaced if necessary as such would only require routine skill in the art to modify the inserts in either Ulmer or Welker to have thermosetting plastic inserts such as polyester inserts as such would be cheaper to replace and will not deteriorate as fast as metals may when exposed to specific environments.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Dzianott, Nagel, Maurice, Liller, Jansen, and LaGrange disclosing state of the art inserts to control flow around elbows and bends.

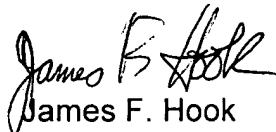
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-

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4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3754

JFH